

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| KATHRYN TOWNSEND GRIFFIN, HELEN | : |
| MCDONALD, and The Estate of CHERRIGALE | : |
| TOWNSEND, | : |
| | : |
| Plaintiffs, | : |
| | : |
| -against- | : |
| | : |
| EDWARD CHRISTOPHER SHEERAN, p/k/a | : |
| ED SHEERAN, ATLANTIC RECORDING | : |
| CORPORATION, d/b/a ATLANTIC RECORDS, | : |
| SONY/ATV MUSIC PUBLISHING, LLC and | : |
| WARNER MUSIC GROUP CORPORATION | : |
| d/b/a ASYLUM RECORDS, | : |
| | : |
| Defendants. | : |
| ----- X | |

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY
IN OPPOSITION TO DEFENDANTS' FIRST MOTION *IN LIMINE***

The Plaintiffs, collectively, submit the instant Notice of Supplemental Authority by way of further opposition to the Defendants' First Motion *in Limine* pertaining to the recent Order of the United States Court of Appeals for the Ninth Circuit in *Skidmore v. Led Zeppelin, et.al.*, No. 16-56057, as issued on June 10, 2019, which granted Rehearing *En Banc*, a copy of which is appended immediately hereto and marked as **Exhibit "A"**.

Notably, in the Order, it is stated that "The three-judge panel disposition in this case **shall not be cited as precedent** by or to any court of the Ninth Circuit (*Emphasis Supplied*)".

On Page Nine (9) of the Defendants' First Motion *in Limine* (Doc. 111), the Defendants conceded that the only decision which they construed to be directly on point with respect to the deposit copy allegedly defining the scope of copyright protection for a musical composition was that of the Ninth Circuit Court in the *Skidmore* case which, by operation of the appended Order,

has now been disavowed/rescinded.

Given that the Ninth Circuit has, as of yesterday, determined that the case opinion upon which the Defendants would seek to rely is no longer valid precedent—even in the Ninth Circuit—the Defendants, by their own admission on Page Nine (9) of their Motion *in Limine*, no longer have any pertinent/applicable case law precedent which supports their legal posture at this time and, as such, the Defendants' First Motion *in Limine* should be summarily denied.

Dated: June 11, 2019

FRANK & RICE, P.A.

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EXHIBIT A

FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 10 2019

FOR THE NINTH CIRCUIT

**MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**

MICHAEL SKIDMORE, AS TRUSTEE
FOR THE RANDY CRAIG WOLFE
TRUST,

Plaintiff-Appellant,

v.

LED ZEPPELIN; JAMES PATRICK
PAGE; ROBERT ANTHONY PLANT;
JOHN PAUL JONES; SUPER HYPE
PUBLISHING, INC.; WARNER MUSIC
GROUP CORPORATION; WARNER
CHAPPELL MUSIC, INC.; ATLANTIC
RECORDING CORPORATION; RHINO
ENTERTAINMENT COMPANY,

Defendants-Appellees.

No. 16-56057

D.C. No.
2:15-cv-03462-RGK-AGR
Central District of California,
Los Angeles

ORDER

MICHAEL SKIDMORE, AS TRUSTEE
FOR THE RANDY CRAIG WOLFE
TRUST,

Plaintiff-Appellee,

v.

WARNER/CHAPPELL MUSIC, INC.,

Defendant-Appellant.

and

LED ZEPPELIN; JAMES PATRICK
PAGE; ROBERT ANTHONY PLANT;
JOHN PAUL JONES; SUPER HYPE
PUBLISHING, INC.; WARNER MUSIC
GROUP CORPORATION, ATLANTIC
RECORDING CORPORATION; RHINO
ENTERTAINMENT COMPANY,

Defendants,

No. 16-56287

D.C. No.

2:15-cv-03462-RGK-AGR

THOMAS, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that these cases be reheard en banc pursuant to Federal Rule of Appellate Procedure 35(a) and Circuit Rule 35-3. The three-judge panel disposition in this case shall not be cited as precedent by or to any court of the Ninth Circuit.

Judge Collins did not participate in the deliberations or vote in these cases.